FARAD CONTINUATION SHEET NO.
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO.734 OF 2004

Office Notes, office Memorandum of Coram, appearances of, Court's orders or directions and Registrar's orders	Court's order Judge's orders

Mr.M.P.S.Tiwari and Shri.K.M.Yadav for appellant.

Mr.J.Xavier for B.M.C.

Mr.P.M. Khamkar for respondent No.2.

Mr.P.D.Phatak, JEC (Maintenance) N-Ward from B.M.C. present.

CORAM: V.C. DAGA, J.

DATED: 7TH SEPTEMBER, 2004.

. This appeal is directed against the order dated 16th July, 2004 in Notice of Motion No.4842 of 2003 in L.C. Suit No.5973 of 2003 whereby the said notice of motion came to be dismissed and interim relief came to be rejected.

2. The suit was filed by the appellant / plaintiff apprehending action of demolition at the hands of the Corporation without following due process of law.

3. The learned counsel appearing for the Municipal Corporation submits that the appellant has already replied to the notice issued under Section 314 of the M.M.C. Act dated 4th September, 2004 and that the Corporation will afford an opportunity of hearing to the appellant and pass a reasoned order. He further submits that till such time a reasoned order is not passed no action will be taken by the Corporation with respect to the structure in question. While reacting to this submission, the learned counsel for the appellant filed a pursis seeking to withdraw the suit, including the Notice of Motion therein.

4. In view of the aforesaid rival submissions and the developments taking place during the course of hearing, the respondent Corporation is allowed to proceed and adjudicate upon the validity of the notice issued under section 314 dated 15/12/2003. At the same time, appellant / plaintiff is allowed to withdrawn the L.C. Suit No.5973 of 2003; since the cause of

action of the suit does not survive in view of the statement made by the Corporation. The suit is thus dismissed for want of cause of action. It is made clear that in the event of an adverse order, it would be always open for the appellant/plaintiff to approach the appropriate forum, if aggrieved by the order that may be passed by the Corporation.

5. In the event the Corporation finds that the appellant is resorting to non co-operation, it would be open for the Corporation to serve notice and proceed in accordance with law.

6. The learned Counsel appearing for the appellant undertakes to produce this order before the trial Court to get the suit formally disposed of as withdrawn with no order as to costs.

7. Appeal stands disposed of with no order as to costs.

. Parties to act on an ordinary

copy of this order duly authenticated by the Associate/C.S.

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